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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Pieter Paul Marc VAN HOECKE et al.

Group Art Unit: 1761

Application No.: 10/528,167

Examiner: Not Yet Assigned

Filed: March 17, 2005

Attorney Docket No.: 7393/84301

Confirmation No.: 2645

Customer No.: 42798

Title: COMPOSITION FOR REPLACING MILK POWDER

**REQUEST TO RE-PUBLISH APPLICATION**  
**WITH PROPER CLAIMS TO CORRECT A PTO ERROR**

Commissioner for Patents  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

Applicants request the PTO to correct its records and re-publish this application with the correct claims.

A copy of the March 17, 2005 Preliminary Amendment with the correct claims 1-18 is attached. A copy of the post card receipt is attached.

It is not seen that a petition to correct the PTO's erroneous publication is required. However, if a Petition is required, the Applicants' petition (albeit contingently) to have their application correctly assembled and correctly published.

This application relates to a composition for replacing milk, and the Preliminary Amendment filed on March 17, 2005 presented composition and process claims.

However, as published on June 22, 2006, US 2006/0134309 A1 incorrectly claims 1-33 to a free-fall simulator, but not the composition and process claims as filed by present Applicants.

This is a PTO mistake and the delay in prosecution has been caused by the PTO.

The incorrect claims have their genesis in a Preliminary Amendment filed by Mr. Maebius of Foley & Lardner as determined by present Applicants' legal representatives upon inspection of Private PAIR. (Mr. Maebius has no power and attorney for Application No. 10/528,167.) This other Preliminary Amendment has a completely different "Attorney Docket" since it was not filed by Applicants' legal representatives. This "other" Preliminary Amendment was not even intended to be related to this application.

The PTO erred by entering the "other" Preliminary Amendment in this Application No. 10/528,167. The PTO did not enter – as it should have – the actual Preliminary Amendment filed herein on March 17, 2005.

Please promptly advise Applicants' legal representative when this correction will be made. The favor of an early reply accompanied with the corrected publication is courteously solicited.

Respectfully submitted,

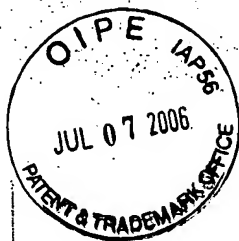
FITCH, EVEN, TABIN & FLANNERY

Date: **July 7, 2006**



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FOR EARLY NOTIFICATION OF SERIAL NO.

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Attorney/typist initials: KHC/rm

The U.S. Patent and Trademark Office acknowledges, and has stamped hereon  
the date of receipt of the items listed below:

Docket No.: 7393/84301 Inventor: Pieter Paul Marc VAN HOECKE et al.  
Application No.: New 371 Application Filing Date: March 17, 2005  
Title: COMPOSITION FOR REPLACING MILK POWDER

**DT08 Rec'd PCT/PTO 17 MAR 2005**

**10/528167**

1. New 371 Application Transmittal (PTO-1390)
2. Application Data Sheet
3. General Authorization for Petition for Extension of Time
4. Preliminary Amendment
5. Written Opinion (PCT/IPEA/408)
6. Information Disclosure Statement and PTO/SB/08A (with 6 references)
7. Specification (17 pages, including Abstract, 18 claims, 4 independent claims)
11. \$1,200 Fee (to be charged to Deposit Account No. 06-1135)

Today's Date: March 17, 2005

Fitch, Even, Tabin & Flannery  
Customer No. 42798

See attached courtesy copy (duplicate)



Customer No. 42798  
Attorney Docket No. 7393/84301

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re

Pieter Paul Marc VAN HOECKE et al.

New 371 Application

Group Art Unit: Not Yet Assigned

Filing Date: March 17, 2005

Examiner: Not Yet Assigned

Confirmation No.: Not Yet Assigned

Title: COMPOSITION FOR REPLACING MILK POWDER

**PRELIMINARY AMENDMENT**

MAIL STOP PCT  
Commissioner for Patents  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22304

Sir:

Please enter this Preliminary Amendment before examination.

Amendments to the specification begin at page 2.

Amendments to the claims begin at page 3.

Remarks begin on page 9.

No. 10/528,167

**Amendments to the Specification:**

Page 1, after the title, insert the following paragraph:

This Application is the National Phase of International Application No. PCT/EP03/10337 filed September 17, 2003, which designated the U.S. and was published under PCT Article 21(2) in English, and this application also claims, via the aforesaid International Application, the foreign priority benefit of and claims the priority from European Application No. EP 0221746.1, filed September 19, 2002, the complete disclosures of which are incorporated herein by reference.

**Amendments to the Claims:**

This listing of claims replaces any and all prior claim lists.

**Listing of Claims:**

Claim 1 (Currently amended). A composition comprising:

- a) ~~From~~ from 20 w/w% to 70 w/w% cereal proteins,
- b) ~~From~~ from 25 w/w% to 70 w/w% maltodextrin having a DE of 3 to 10,  
preferably DE of 5,
- c) ~~From~~ from 1 w/w% to 20 w/w% amino acids, and
- d) ~~From~~ from 0 w/w% to 20 w/w% minerals.

Claim 2 (Currently amended). A composition according to claim 1, ~~characterised in that it~~ wherein said composition further is comprising comprises from 1 to 45% w/w fat.

Claim 3 (Currently Amended). A composition according to claim 1 ~~or 2 characterised in that~~ , wherein said cereal proteins are wheat proteins, preferably hydrolysed wheat gluten.

Claim 4 (Currently Amended). A composition according to ~~anyone of claims 1 to 3 characterised in that~~ claim 1, wherein said amino acids are lysine, threonine, tryptophane, or mixtures thereof.

Claim 5 (Currently Amended). A composition according to ~~anyone of claims 1 to 4 characterised in that is comprising~~ claim 1, wherein said composition comprises:

- a) ~~From~~ from 20 w/w% to 50 w/w% wheat gluten,

- b) ~~From from~~ 30 w/w% to 70 w/w% maltodextrin having a DE of 3 to 10,  
~~preferably a DE of 5,~~
- c) ~~From from~~ 1 w/w% to 5 w/w% lysine,
- d) ~~From from~~ 0.3 w/w% to 5 w/w% threonine,
- e) ~~From from~~ 0.05 w/w% to 2 w/w% thryptophane,
- f) ~~From from~~ 0 w/w% to 5% w/w% calcium-based salts,
- g) ~~From from~~ 0 w/w% to 10 w/w% phosphate-based salts,
- h) ~~From from~~ 0 w/w% to 45 w/w% fat, and
- i) ~~From from~~ 0 w/w% to 5 w/w% sodium chloride.

Claim 6 (Currently Amended). A composition according to ~~anyone of claims 1 to 5~~  
~~characterised in that it is comprising~~ claim 1, wherein said composition comprises:

- a) ~~From from~~ 35 w/w% to 45 w/w% wheat gluten,
- b) ~~From from~~ 45 w/w% to 55 w/w% maltodextrin having a DE of 3 to 10  
~~preferably a DE of 5,~~
- c) ~~From from~~ 1 w/w% to 5 w/w% lysine,
- d) ~~From from~~ 0.3 w/w% to 5 w/w% threonine,
- e) ~~From from~~ 0.05 w/w% to 2 w/w% thryptophane,
- f) ~~From from~~ 0 w/w% to 5% w/w% calcium hydroxide,
- g) ~~From from~~ 0 w/w% to 10 w/w% salts of phosphoric acid,
- h) ~~From from~~ 0 w/w% to 5 w/w% sodium chloride, and
- i) ~~From from~~ 0 w/w% to 45 w/w% fat.

Claim 7 (Currently amended). A process for preparing a composition of cereal  
protein, maltodextrin, and amino acids, ~~and~~ said process is comprising:

- a) ~~Blending~~ blending in liquid phase maltodextrin having a DE of 3 to 10, preferably a DE of 5, and cereal proteins preferably wheat gluten,
- b) ~~Increasing~~ increasing the dry substance of the liquid phase,
- c) ~~Adding~~ adding amino acids in liquid form for obtaining a liquid composition,
- d) ~~Optionally~~ optionally adding water soluble minerals for obtaining a completed composition,
- e) ~~Optionally~~ optionally adding fat and homogenizing with the liquid or completed composition, and
- f) ~~Drying of~~ drying the liquid composition or completed composition.

Claim 8 (Currently amended). A process according to claim 7 ~~characterized in that~~, wherein in step f) the liquid or completed composition is dried in a ringdryer.

Claim 9 (Currently Amended). A process according to claim 7 ~~or 8 and~~, wherein said process ~~is comprising~~ comprises the following steps:

- a) ~~Hydrolysing~~ hydrolyzing wheat gluten for obtaining hydrolysed wheat gluten of having a degree of hydrolysis (DH) between 3 and 15%,
- b) ~~Hydrolysing~~ hydrolyzing starch to maltodextrin of DE of from 3 to 10,
- c) ~~Blending~~ blending in liquid phase hydrolysed wheat gluten and maltodextrin,
- d) ~~Increasing~~ increasing the dry substance of liquid phase to at least 55%w/w,
- e) ~~Adding~~ adding amino acids in liquid form for obtaining a liquid composition,
- f) ~~Optionally~~ optionally adding water soluble minerals and/or fat for obtaining a completed composition,
- g) ~~Optionally~~ optionally adding fat and homogenizing with the liquid or completed composition, and



- h) ~~Drying of~~ drying the liquid composition or completed composition.

Claim 10 (Currently Amended). A process according to ~~anyone of claims claim 7 to 9~~  
~~and~~ , said process is comprising the following steps:

- a) ~~Hydrolysing~~ hydrolyzing wheat gluten for obtaining hydrolysed wheat gluten of degree of hydrolysis (DH) between 3 and 15%,
- b) ~~Hydrolysing~~ hydrolyzing starch to maltodextrin of DE of 5,
- c) ~~Blending~~ blending in liquid phase hydrolysed wheat gluten and maltodextrin,
- d) ~~Increasing~~ increasing dry substance of liquid phase to 60%w/w,
- e) ~~Hydrolysing~~ hydrolyzing in liquid form lysine, threonine and tryptophane for obtaining liquid composition,
- f) ~~Hydrolysing~~ hydrolyzing calcium hydroxide, salts of phosphoric acid and sodium chloride for obtaining a completed composition,
- g) ~~Optionally~~ optionally adding fat and homogenizing with the completed composition, and
- h) ~~Drying of~~ drying the completed composition.

Claim 11 (Currently amended). ~~Use of~~ A method for replacing milk powder in a food application or in feed application comprising using a composition comprising a) from 20 w/w% to 70 w/w% cereal proteins, b) from 25 w/w% to 70 w/w% maltodextrin having a DE of 3 to 10, ~~preferably a DE of 5~~, c) from 1 w/w% to 20 w/w% amino acids, d) from 0 w/w% to 20 w/w% minerals, and e) from 0 w/w% to 45 w/w% fat, ~~for replacing milk powder in food applications or feed applications~~ instead of at least a portion of the milk powder when preparing said food application or feed application.

Claim 12 (Currently amended). ~~Use~~ The method according to claim 12 ~~characterised in that~~, wherein said feed applications are suitable for young animals.

Claim 13 (Currently Amended). ~~Use~~ The method according to claim 13 ~~characterised in that~~ 12, wherein said young animals are selected from the group consisting of calves, piglets, lambs, and pet.

Claim 14 (Currently amended). A calf milk replacer comprising ~~calf milk replacer as~~ ingredients ~~and~~ from 1 to 55% of a composition which is containing a) from 20 w/w% to 70 w/w% cereal proteins, b) from 25 w/w% to 70 w/w% maltodextrin having a DE of 3 to 10, ~~preferably a DE of 5~~, c) from 1 w/w% to 20 w/w% amino acids, d) from 0 w/w% to 20 w/w% minerals, and e) from 0 w/w% to 45 w/w% fat.

Claim 15 (Currently Amended). A calf milk replacer according to claim 15 ~~characterised in that it is comprising~~ 14, wherein said calf milk replacer comprises from 1 to 35% ~~a of said composition which is containing a) 20 w/w% to 70 w/w% cereal proteins, b) from 25 w/w% to 70 w/w% maltodextrin having a DE of 3 to 10, preferably a DE of 5, c) from 1 w/w% to 20 w/w% amino acids, d) from 0 w/w% to 20 w/w% minerals, and e) from 0 w/w% to 45 w/w% fat.~~

Claim 16 (New). A composition according to claim 1, wherein said maltodextrin has a DE of 5.

Claim 17 (New). A composition according to claim 1, wherein said cereal proteins are hydrolyzed wheat gluten.

Preliminary Amendment  
New 371 Application

Atty. Docket No. 7393/84301

Claim 18 (New). A composition according to claim 11, wherein said maltodextrin has a DE of 5.

**REMARKS**

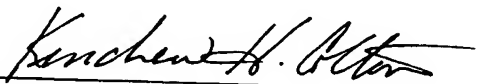
Applicants respectfully request the entry of this Preliminary Amendment.

Applicants amended their specification to incorporate the lineage of this U.S. National Phase Application.

Applicants preliminarily amended their claims to avoid improper multiple dependent claims, and to present more conventional idiomatic U.S. claim language.

Favorable first action on the merits is earnestly solicited.

Date: March 17, 2005

  
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